

May 6, 2003

**BY MESSENGER**

Mr. Stephen Paglia  
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Dear Mr. Paglia:

**Joint Forum of Financial Market Regulators Consultation Paper 81-403 “Rethinking Point of Sale Disclosure For Segregated Funds and Mutual Funds”**

This letter responds to the request for comments relating to the above-noted consultation paper published on February 13, 2003 by the Canadian Securities Administrators and the Canadian Council of Insurance Regulators. As requested, we enclose two copies of this letter and a diskette containing the document in Word format.

1. **General**

We commend the Joint Forum on its initiative to harmonize point of sale disclosure for segregated funds and for mutual funds, and to bring fresh thought to what information is important to be presented to investors at the time of making an investment decision, what information is important for investors at other times in their investment relationship with a segregated fund and/or mutual fund, and the best method by which such information can be made available to investors.

We have reviewed the response to the Consultation Paper prepared by The Investment Funds Institute of Canada (“IFIC”) and we adopt the comments made in that response. In addition, we have the following specific comments on particular aspects of the Consultation Paper and IFIC’s response letter:

1. **The Foundation Document**

The Consultation Paper seems to contemplate a separate Foundation Document for each fund. However, given that the Foundation Document will describe the static features of each fund, we expect that some of these static features will be common among funds in a fund family. For example, the service providers to the fund, how the fund is valued and how the fund can be purchased and redeemed are likely to be features common to more than one fund in a fund

family. Accordingly, we suggest that fund operators should be permitted to create a single Foundation Document for a fund family. This will reduce duplication while still ensuring that investors are given access to current and accurate information about each fund.

We recommend that the Joint Forum establish clearly articulated principles to regulate the types of information provided in the Fund Summary Document and Foundation Document, rather than mandate a strict form for such documents. We believe that fund operators, with assistance from their advisers, should be permitted to develop disclosure documents that comply with general principles rather than being required to tailor their disclosure to comply with detailed form requirements which may or may not be relevant for a particular fund or family of funds.

In order for the Foundation Document to be an effective and concise source of information for investors, the requirements for the Foundation Document should focus on the principles of the disclosure items that are currently required by Form 81-101F2 for a Simplified Prospectus. The information currently required by Form 81-101F2 for an Annual Information Form which is not particularly relevant for investors and advisors could be eliminated from the requirements for the Foundation Document. For example, except for the names of the key service providers to the fund and information relating to the portfolio management function, much of the detailed information required by Item 10 – Responsibility for Mutual Fund Operations could be eliminated from the requirements. When the Canadian Securities Administrators adopt the rules for the proposed fund governance regime, much of the information required by Item 4 - Investment Restrictions, Item 11 – Conflicts of Interest and Item 12 – Fund Governance could be eliminated or substantially re-worked in light of the fund governance regime.

We also note that the Consultation Paper recommends that, because the Foundation Document will be evergreen, annual refiling requirements be dropped. We agree with this recommendation on the basis that the Foundation Document will be a relatively static document. Currently, fund managers are arbitrarily required to refile the Simplified Prospectus and Annual Information Form on an annual basis regardless of whether or not there has been a material change in the information contained in those documents. By requiring refiling of the Foundation Document only in the event that there is a material change in the information contained in the document, regulators will ensure that up-to-date information is disseminated to potential investors, while limiting the amount of time and resources of regulators and fund operators spent on unnecessary refilings.

The Consultation Paper recommends that fund operators be required to post the Foundation Document and the continuous disclosure documents for each fund they manage on their websites. We agree with the adoption of an “access-equals-delivery” standard for the Foundation Document and the continuous disclosure documents. As SEDAR, in its current format, is seen by some as not a particularly investor-friendly website, SEDAR postings alone may not be sufficient to make the Foundation Document and continuous disclosure documents available to investors. Fund operators should be required to post such documents on SEDAR as

well as on their own websites and to make access through such websites very investor friendly. The Fund Summary should provide clear direction as to where these documents can be obtained: the fund operator's website, SEDAR or by requesting copies from the fund operator (by telephone or e-mail).

## 2. **The Fund Summary Document**

We understand that two of the most important pieces of information for prospective investors and their advisors are the fund performance information and the management expense ratio (MER). We question the Joint Forum's recommendation that both of these pieces of information be placed in the Fund Summary Document. As IFIC has suggested, given the non-static nature of these pieces of information, it may be preferable for the Fund Summary to provide clear direction as to where the most current information can be obtained (the fund operator's website for example) rather than including such information in the Fund Summary unless the Fund Summary is to be updated on a regular basis to include such information. While the MER and a simple explanation of its calculation may be included in the Fund Summary, a more detailed explanation, including its key components, should be left for the Foundation Document.

With respect to your question as to whether Fund Summary Documents should be receipted, as the Consultation Paper contemplates a separate Fund Summary Document for each and every fund, we believe it would be administratively impractical for regulators to receipt each and every Fund Summary Document. Regulators will, however, be able to rely on their continuous disclosure review powers to review and comment on the disclosure records of funds as they see fit.

The Consultation Paper proposes that salespersons be required to review the Fund Summary Document in "a meaningful way" with potential investors during the sales process. This requirement may be difficult to meet given that a significant portion of sales transactions in the fund industry does not involve face-to-face communications between salesperson and investor, but rather proceeds through telephone and electronic channels. We agree with IFIC's recommendation that, in order to remove uncertainty relating to the application of the "access-equals-delivery" standard, the investor's role in the pre-purchase due diligence should be formalized. This could be accomplished by requiring investors to acknowledge that they have either reviewed the Fund Summary and Foundation Document to their satisfaction or they formally waive their right to review such information.

With respect to your enquiry about consumers investing on a periodic basis, we believe that access to continuous disclosure information will be sufficient to keep periodic investors informed about their fund. By putting all the relevant information about a fund on the fund operator's web-site as well as on SEDAR, periodic investors will be given the opportunity to review the fund's document each time a periodic investment is made, or they may choose not to review such information. We recommend that fund operators should only be required to inform periodic investors of access to disclosure documents on the establishment of an automatic purchase plan.

We are pleased to have had this opportunity to provide our initial comments on the Consultation Paper. If you have any questions or comments please contact Linda Currie at (416) 862-6600 or John Black (416) 862-6586.

Yours truly,

OSLER, HOSKIN & HARCOURT LLP